Texas Department of Insurance
Division of Workers' Compensation
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
512-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

RENAISSANCE HOSPITAL DALLAS
C/O BURTON & HYDE PLLC
PO BOX 684749
AUSTIN TX 78768-4749

Carrier's Austin Representative Box
#11

MFDR Date Received
NOVEMBER 17, 2008

Respondent Name
TPS JOINT SELF INS FUNDS

MFDR Tracking Number
M4-09-2859-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated October 29, 2008: "This bill should have been audited and reimbursed per the Stop-Loss reimbursement factor and methodology per the criteria as defined in TDI-DWC rule 134.401(c)(6)(A)…Per the stop-loss method the carrier should have reimbursed the provider $120,029.33..."

Requestor's Supplemental Position Summary Dated September 16, 2011: "1. **The Audited charges of $88,560.00 for [Claimant's] hospital inpatient admission exceeds the $40,000 stop-loss threshold**. 2. **The services rendered to [Claimant] were unusually costly and extensive**…because:

- [**Claimant] underwent a major and extensive surgical procedure**.
- [**Claimant's] admission involved unusual circumstances, she suffered complications**. [Claimant's] length of stay was extended. She required a blood transfusion post-operatively. Her breathing became labored after surgery.
- [**Claimant] had an infection**. She had a fever, which peeked at 102 degrees…a rare bacterium was also discovered in her urine analysis.
- **Front-loaded costs.** The cost associated with this admission were front-loaded because in order to provide these unusually costly and extensive services the hospital had to incur major expense. Notably, the hospital purchased $9,748.60 in implants and the carrier has paid $0.00.
- **The length of stay was outside of the ordinary**. When compared to the results of a statistical survey of system-wide data maintained by the Division for hospital inpatient admissions in Texas, [Claimant's] five (5) day hospital stay was outside of the ordinary because it was longer than most others and exceeded system norms… The average length of stay for 2007 admissions with Principle Diagnosis Code 715.36 and Principal Procedure Code 81.54 was three (3) days. [Claimant's] hospital stay was outside the ordinary (unusual) because the length of stay, five (5) days, exceeded the average length of stay for inpatient admissions involving the same Principal Diagnosis Code and Principal Procedure Code.
- **The cost of the admission as outside of the ordinary**. [Claimant's] hospital admission was outside of the ordinary because the cost of the services for this admission when compared to the results of a statistical survey of system-wide data maintained by the Division for hospital inpatient admissions in Texas exceeded the norm The average amount billed for hospital inpatient admissions system-wide in the State of Texas in 2007 was $39,766.32. The average amount billed for hospital inpatient admissions with Principal Diagnosis Code (715.36) and Principal Procedure Code (81.54) in 2007 was $51,384.91. The charge for [Claimant's] admission was $88,560.00. [Claimant's] hospital admission was outside of the ordinary because the amount billed was greater than the system-wide average for 2007… For these reasons, the Medical Fee Dispute

Officer should find that the second-prong of the two part test is satisfied and order additional reimbursement be paid by the carrier according to the stop-loss calculation methodology."

Amount in Dispute: $66,420.69

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated December 5, 2008: "The Requestor seeks additional reimbursement under the former Acute Care Inpatient Hospital Fee Guidelines. The Requestor has invoked the Stop-Loss provision of Rule 134.401(c)(6) (now repealed) and seeks additional reimbursement in the amount of $66,420.69 for a five-day stay following total knee replacement…Respondent did not issue payment on this matter as a PLN was filed on December 20, 2006 disputing any injury to the left knee…The Provider/Requestor has failed to provide the base costs of the supplies and implants. Requestor has failed to show why it is entitled to reimbursement under the Stop-Loss methodology…Former Division rule 134.401 outlines the Stop-Loss reimbursement provisions. To invoke the Stop-Loss reimbursement provisions, the Requestor must meet **two** criteria…In this matter, the Requestor's bill fails to satisfy the requisite criteria. The Provider/Requestor has failed to provide objective medical documentation to support any argument that the services were unusually extensive or costly…The Requestor has failed to provide an itemized copy of all payments received by the Requestor for any and all services to justify its usual and customary rate not only for its facility, but also a usual and customary rate for the same or similar facility in the same geographic area. The Requestor has failed to supply invoices for supply/implant costs despite requests by the Respondent for this documentation in previous matters…Respondent audited the charges accordingly and will pay a fair and reasonable rate should the extent of injury issue be decided in the claimant's favor….Respondent maintains that the Stop-Loss methodology is not applicable in the matter and a fair and reasonable rate will be paid for the services should the extent of injury issue be resolved."

Response Submitted by: Harris & Harris

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
December 6, 2007 through December 11, 2007	Inpatient Hospital Services	$66,420.69	$5,590.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 33 *Texas Register* 3954, applicable to requests filed on or after May 25, 2008, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 31 *Texas Register* 3561, effective May 2, 2006, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits dated February 27, 2008

- W12 – Extent of Injury. Not finally adjudicated.
- *PER ADJUSTER: DWC PLN-1 ATTACHED
- *ADD'L DX CODES – V145, V14.6 & V14.0

U.S. Bankruptcy Judge Michael Lynn issued a "STIPULATION AND ORDER GRANTING RELIEF FROM AUTOMATIC STAY TO PERMIT CONTINUANCE AND ADJUDICATION OF DISPUTED WORKERS COMPENSATION CLAIMS BEFORE THE TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS," dated August 27, 2010, in the

case of *In re: Renaissance Hospital – Grand Prairie, Inc. d/b/a/ Renaissance Hospital – Grand Prairie, et al.*, in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division in Case No. 08-43775-7. The order lifted the automatic stay to allow continuance of the claim adjudication process as to the workers' compensation receivables before SOAH, effective October 1, 2010. The order specified John Dee Spicer as the Chapter 7 trustee of the debtor's estate. By letter dated October 5, 2010, Mr. Spicer provided express written authorization for Cass Burton of the law office of Burton & Hyde, PLLC, PO Box 684749, Austin, Texas 78768-4749, to be the point of contact on Mr. Spicer's behalf relating to matters between and among the debtors and the Division concerning medical fee disputes. The Division will utilize this address in all communications with the requestor regarding this medical fee dispute.

Issues

1. Does an extent of injury issue exist?
2. Did the audited charges exceed $40,000.00?
3. Did the admission in dispute involve unusually extensive services?
4. Did the admission in dispute involve unusually costly services?
5. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed $40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The division received supplemental information as noted in the position summaries above. The supplemental information was shared among the parties as appropriate. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges ***in this case*** exceed $40,000; whether the admission and disputed services ***in this case*** are unusually extensive; and whether the admission and disputed services ***in this case*** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection…" 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. According to the explanation of benefits, the respondent denied reimbursement for the disputed inpatient hospitalization based upon reason code "W12." A review of Division records finds that on September 24, 2008, the parties reached an agreement that the compensable injury extends to osteoarthritis, regyniatiud arthritis and degenerative changes to the left knee; therefore, an extent of injury issue does not exist.
2. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "…to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed $40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "…Audited charges are those charges which remain after a bill review by the insurance carrier has been performed…" Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal $88,560.93. The Division concludes that the total audited charges exceed $40,000.
3. In its original position statement, the requestor asserts that "This bill should have been audited and reimbursed per the Stop-Loss reimbursement factor and methodology per the criteria as defined in TDI-DWC rule 134.401(c)(6)(A)." 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that "This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission." The Third Court of Appeals' November 13, 2008 opinion states that "to be eligible for reimbursement under the Stop-Loss Exception, a

hospital must demonstrate that the total audited charges exceed $40,000 and that an admission involved unusually costly and unusually extensive services." The requestor's original position statement failed to discuss the particulars of the admission in dispute that may constitute unusually extensive services. In its supplemental position statement, the requestor considered the Courts' final judgment. In regards to whether the services were unusually extensive, the Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually extensive services. The requestor's supplemental position statement asserts, that "The services rendered to [Claimant] were unusually costly and extensive…because: [Claimant] underwent a major and extensive surgical procedure. [Claimant's] admission involved unusual circumstances, she suffered complications. [Claimant had an infection." The requestor's position that this admission is unusually extensive due to surgical procedures, complications and infection fails to meet the requirements of §134.401(c)(2)(C) because the requestor failed to demonstrate how the services in dispute were unusually extensive in relation to similar knee surgeries or admissions.

The requestor goes on to state:

> The length of stay was outside of the ordinary. When compared to the results of a statistical survey of system-wide data maintained by the Division for hospital inpatient admissions in Texas, [Claimant's] five (5) day hospital stay was outside of the ordinary because it was longer than most others and exceeded system norms… The average length of stay for 2007 admissions with Principle Diagnosis Code 715.36 and Principal Procedure Code 81.54 was three (3) days. [Claimant's] hospital stay was outside the ordinary (unusual) because the length of stay, five (5) days, exceeded the average length of stay for inpatient admissions involving the same Principal Diagnosis Code and Principal Procedure Code.

The Third Court of Appeals' November 13, 2008 opinion states that "…independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases." A review of the data reports provided by the requestor finds that although length of stay for the services in dispute exceeded the average length of stay when compared to admissions with the same principal diagnosis and procedure code, the requestor did not demonstrate or explain how merely exceeding the average length of stay would: (1) constitute unusually extensive services; (2) categorize this case among the relatively few cases to which the stop-loss method may apply. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).

4. 28 Texas Administrative Code §134.401(c)(6) states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor in its supplemental position summary states:

> The cost of the admission as outside of the ordinary. [Claimant's] hospital admission was outside of the ordinary because the cost of the services for this admission when compared to the results of a statistical survey of system-wide data maintained by the Division for hospital inpatient admissions in Texas exceeded the norm The average amount billed for hospital inpatient admissions system-wide in the State of Texas in 2007 was $39,766.32. The average amount billed for hospital inpatient admissions with Principal Diagnosis Code (715.36) and Principal Procedure Code (81.54) in 2007 was $51,384.91. The charge for [Claimant's] admission was $88,560.00. [Claimant's] hospital admission was outside of the ordinary because the amount billed was greater than the system-wide average for 2007.

The division notes that the audited charges of $88,560.93 are discussed above as a separate and distinct factor pursuant to 28 Texas Administrative Code §134.401(c)(6)(A)(i)). The requestor asserts that because the amount ***billed charges*** exceeds the average for the same principal diagnosis and procedure codes, and the costs were front-loaded, the ***cost*** of the services is therefore "out of the ordinary." Although the requestor lists and quantifies ***billing*** data, the requestor fails to list or quantify the ***costs*** associated with the disputed services. In the adoption preamble to the Division's former *Acute Care Inpatient Hospital Fee Guideline*, 22 *Texas Register* 6276, the division concluded that "hospital charges are not a valid indicator of a hospital's costs of providing services."

The requestor further states:

> Front-loaded costs. The cost associated with this admission were front-loaded because in order to provide these unusually costly and extensive services the hospital had to incur major expense. Notably, the hospital purchased $9,748.60 in implants and the carrier has paid $0.00.

For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative

Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements.* The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.

5. Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of $1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission…" The length of stay was five days. The surgical per diem rate of $1,118.00 multiplied by the length of stay of five days results in an allowable amount of $5,590.00.
   - 28 Texas Administrative Code §134.401(c)(4)(A), states "When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274)." A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at $23,463.75. The medical documentation provided finds that although the requestor submitted purchase orders to support what the requestor was charged by the supplier for the implantables, there was no documentation found to support the amounts that the requestor paid for the implantables. The division finds that the cost to the hospital for the implantables billed under revenue code 0278 cannot be established; therefore no reimbursement can be recommended for these items.
6. 28 Texas Administrative Code §134.401(c)(4)(B) allows that "When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (iv) Blood (revenue codes 380-399)." A review of the submitted hospital bill finds that the requestor billed $1,545.60 for revenue code 390-Blood/Stor-Proc. 28 Texas Administrative Code §133.307(g)(3)(D), requires the requestor to provide "documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement." Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue code 390 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended.

The division concludes that the total allowable for this admission is $5,590.00. Based upon the documentation submitted, additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed $40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount,* and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of $5,590.00 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

Signature	Medical Fee Dispute Resolution Officer	3/7/2013 Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.